

1 **DEPARTMENT OF ENVIRONMENTAL QUALITY AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill amends provisions relating to the Water Quality Board, rulemaking procedure,
8 and the Administrative Rules Review Committee.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides for review and Legislative approval of certain Water Quality Board rules
- 12 or standards;
- 13 ▶ requires an agency to submit certain proposed rules to an appropriations
- 14 subcommittee for review before the agency enacts the rules or implements permits
- 15 in reaction to those rules;
- 16 ▶ amends the duties of the Administrative Rules Review Committee; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **19-5-104.5**, as enacted by Laws of Utah 2011, Chapter 304

25 **63G-3-301**, as last amended by Laws of Utah 2017, Chapter 255

26 **63G-3-501**, as last amended by Laws of Utah 2016, Chapter 193

27

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **19-5-104.5** is amended to read:

30 **19-5-104.5. Legislative approval.**

31 (1) Before sending a board-approved report, strategy, or recommendation that will
32 recommend a total maximum daily load end point and implementation strategy to the EPA for

33 review and approval, the Water Quality Board shall submit the report, strategy, or
34 recommendation:

35 (a) for review to the Natural Resources, Agriculture, and Environment Interim
36 Committee if the report, strategy, or recommendation will require a public or private
37 expenditure in excess of \$10,000,000 but less than \$100,000,000 for compliance; or

38 (b) for approval to the Legislature if the strategy will require a public or private
39 expenditure of \$100,000,000 or more.

40 (2) (a) As used in this Subsection:

41 (i) "Expenditure" means the act of expending funds:

42 (A) by an individual public facility with a Utah Pollutant Discharge Elimination
43 System permit, or by a group of private agricultural facilities; and

44 (B) through an initial capital investment, or through operational costs over a 20-year
45 period.

46 (ii) "Utah Pollutant Discharge Elimination System" means the state permit system
47 created in accordance with 33 U.S.C. Sec. 1342.

48 (b) Before the board adopts a nitrogen, phosphorus, or ammonia rule or standard, the
49 board shall submit the rule or standard as directed in Subsections (2)(c) and (2)(d).

50 (c) If compliance with the rule or standard requires an expenditure in excess of
51 \$2,000,000, but less than \$10,000,000, the board shall submit the rule or standard for review to
52 the National Resources, Agriculture, and Environment Interim Committee.

53 (d) if compliance with the rule or standard requires an expenditure of \$10,000,000 or
54 more, the board shall submit the rule or standard for approval to the Legislature.

55 (e) (i) A facility shall estimate the cost of compliance with a board-proposed rule or
56 standard described in Subsection (2)(b) using:

57 (A) an independent, licensed engineer; and

58 (B) industry-accepted project cost estimate methods.

59 (ii) The board may evaluate and report on a compliance estimate described in
60 Subsection (2)(e)(i).

61 ~~(2)~~ (3) In reviewing a report, strategy, rule, standard, or recommendation, the Natural
62 Resources, Agriculture, and Environment Interim Committee may:

63 (a) consider the impact of the report, strategy, rule, standard, or recommendation on:

- 64 (i) economic costs and benefit;
 65 (ii) public health; and
 66 (iii) the environment;
 67 ~~[(a)]~~ (b) suggest additional areas of consideration; or
 68 ~~[(b)]~~ (c) recommend the report, strategy, rule, standard, or recommendation [~~be~~
 69 ~~re-evaluated by the Water Quality Board;~~ to the board for:
 70 (i) adoption; or
 71 (ii) re-evaluation followed by further review by the committee.

72 Section 2. Section **63G-3-301** is amended to read:

73 **63G-3-301. Rulemaking procedure.**

- 74 (1) An agency authorized to make rules is also authorized to amend or repeal those
 75 rules.
 76 (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making,
 77 amending, or repealing a rule agencies shall comply with:
 78 (a) the requirements of this section;
 79 (b) consistent procedures required by other statutes;
 80 (c) applicable federal mandates; and
 81 (d) rules made by the department to implement this chapter.
 82 (3) Subject to the requirements of this chapter, each agency shall develop and use
 83 flexible approaches in drafting rules that meet the needs of the agency and that involve persons
 84 affected by the agency's rules.
 85 (4) (a) Each agency shall file [~~its~~] the agency's proposed rule and rule analysis with the
 86 office.
 87 (b) Rule amendments shall be marked with new language underlined and deleted
 88 language struck out.
 89 (c) (i) The office shall publish the information required under Subsection (8) on the
 90 rule analysis and the text of the proposed rule in the next issue of the bulletin.
 91 (ii) For rule amendments, only the section or subsection of the rule being amended
 92 need be printed.
 93 (iii) If the executive director or the executive director's designee determines that the
 94 rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by

95 reference to a copy on file with the office.

96 (5) Before filing a rule with the office, the agency shall conduct a thorough analysis,
97 consistent with the criteria established by the Governor's Office of Management and Budget, of
98 the fiscal impact a rule may have on businesses, which criteria may include:

99 (a) the type of industries that will be impacted by the rule, and for each identified
100 industry, an estimate of the total number of businesses within the industry, and an estimate of
101 the number of those businesses that are small businesses;

102 (b) the individual fiscal impact that would incur to a typical business for a one-year
103 period;

104 (c) the aggregated total fiscal impact that would incur to all businesses within the state
105 for a one-year period;

106 (d) the total cost that would incur to all impacted entities over a five-year period; [~~and~~]

107 (e) the total cost that would incur to all impacted entities over a twenty-year period;

108 and

109 [~~(e)~~] (f) the department head's comments on the analysis.

110 (6) If the agency reasonably expects that a proposed rule will have a measurable
111 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal
112 law, each of the following methods of reducing the impact of the rule on small businesses:

113 (a) establishing less stringent compliance or reporting requirements for small
114 businesses;

115 (b) establishing less stringent schedules or deadlines for compliance or reporting
116 requirements for small businesses;

117 (c) consolidating or simplifying compliance or reporting requirements for small
118 businesses;

119 (d) establishing performance standards for small businesses to replace design or
120 operational standards required in the proposed rule; and

121 (e) exempting small businesses from all or any part of the requirements contained in
122 the proposed rule.

123 (7) If during the public comment period an agency receives comment that the proposed
124 rule will cost small business more than one day's annual average gross receipts, and the agency
125 had not previously performed the analysis in Subsection (6), the agency shall perform the

- 126 analysis described in Subsection (6).
- 127 (8) The rule analysis shall contain:
- 128 (a) a summary of the rule or change;
- 129 (b) the purpose of the rule or reason for the change;
- 130 (c) the statutory authority or federal requirement for the rule;
- 131 (d) the anticipated cost or savings to:
- 132 (i) the state budget;
- 133 (ii) local governments;
- 134 (iii) small businesses; and
- 135 (iv) persons other than small businesses, businesses, or local governmental entities;
- 136 (e) the compliance cost for affected persons;
- 137 (f) how interested persons may review the full text of the rule;
- 138 (g) how interested persons may present their views on the rule;
- 139 (h) the time and place of any scheduled public hearing;
- 140 (i) the name and telephone number of an agency employee who may be contacted
- 141 about the rule;
- 142 (j) the name of the agency head or designee who authorized the rule;
- 143 (k) the date on which the rule may become effective following the public comment
- 144 period;
- 145 (l) the agency's analysis on the fiscal impact of the rule as required under Subsection
- 146 (5);
- 147 (m) any additional comments the department head may choose to submit regarding the
- 148 fiscal impact the rule may have on businesses; and
- 149 (n) if applicable, a summary of the agency's efforts to comply with the requirements of
- 150 Subsection (6).
- 151 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
- 152 summary that generally includes the following:
- 153 (i) a summary of substantive provisions in the repealed rule which are eliminated from
- 154 the enacted rule; and
- 155 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 156 (b) The summary required under this Subsection (9) is to aid in review and may not be

157 used to contest any rule on the ground of noncompliance with the procedural requirements of
158 this chapter.

159 (10) A copy of the rule analysis shall be mailed to all persons who have made timely
160 request of the agency for advance notice of ~~[its]~~ the agency's rulemaking proceedings and to
161 any other person who, by statutory or federal mandate or in the judgment of the agency, should
162 also receive notice.

163 (11) (a) Following the publication date, the agency shall allow at least 30 days for
164 public comment on the rule.

165 (b) The agency shall review and evaluate all public comments submitted in writing
166 within the time period under Subsection (11)(a) or presented at public hearings conducted by
167 the agency within the time period under Subsection (11)(a).

168 (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule
169 becomes effective on any date specified by the agency that is:

170 (i) no fewer than seven calendar days after the ~~[close of]~~ day on which the public
171 comment period closes under Subsection (11)~~[, nor]~~; and

172 (ii) no more than 120 days after the ~~[publication date]~~ day on which rule is published.

173 (b) The agency shall provide notice of the rule's effective date to the office in the form
174 required by the department.

175 (c) The notice of effective date may not provide for an effective date ~~[prior to]~~ before
176 the ~~[date it is received by the office]~~ day on which the office receives the notice.

177 (d) The office shall publish notice of the effective date of the rule in the next issue of
178 the bulletin.

179 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
180 not filed with the office within 120 days ~~[of publication]~~ after the day on which the rule is
181 published.

182 (13) (a) Before an agency enacts a rule or implements a permit in relation to a rule, the
183 agency shall submit to the appropriations subcommittee with jurisdiction over the agency the
184 agency's proposed rule or permit, if the proposed rule or permit, over a 20-year period, has a
185 fiscal impact of more than:

186 (i) \$2,000,000 to a single person; or

187 (ii) \$50,000,000 to a group of persons.

188 (b) After reviewing a rule or permit under Subsection (6)(a), an appropriations
 189 subcommittee may recommend to the agency whose rule or permit is being reviewed that the
 190 rule or permit be:

191 (i) enacted or implemented; or

192 (ii) re-evaluated, followed by further review by the appropriations subcommittee.

193 ~~[(13)]~~ (14) (a) As used in this Subsection ~~[(13)]~~ (14), "initiate rulemaking proceedings"
 194 means the filing, for the purposes of publication in accordance with Subsection (4), of an
 195 agency's proposed rule that is required by state statute.

196 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
 197 ~~[effective date of]~~ day on which the statutory provision that specifically requires the
 198 rulemaking takes effect, except under Subsection ~~[(13)]~~ (14)(c).

199 (c) When a statute is enacted that requires agency rulemaking and the affected agency
 200 already has rules in place that meet the statutory requirement, the agency shall submit the rules
 201 to the Administrative Rules Review Committee for review within 60 days after the day on
 202 which the statute requiring the rulemaking takes effect.

203 (d) If a state agency does not initiate rulemaking proceedings in accordance with the
 204 time requirements in Subsection ~~[(13)]~~ (14)(b), the state agency shall appear before the
 205 legislative Administrative Rules Review Committee and provide the reasons for the delay.

206 Section 3. Section **63G-3-501** is amended to read:

207 **63G-3-501. Administrative Rules Review Committee.**

208 (1) (a) There is created an Administrative Rules Review Committee of the following
 209 10 permanent members:

210 (i) five members of the Senate appointed by the president of the Senate, no more than
 211 three of whom may be from the same political party; and

212 (ii) five members of the House of Representatives appointed by the speaker of the
 213 House of Representatives, no more than three of whom may be from the same political party.

214 (b) Each permanent member shall serve:

215 (i) for a two-year term; or

216 (ii) until the permanent member's successor is appointed.

217 (c) (i) A vacancy exists when a permanent member ceases to be a member of the
 218 Legislature, or when a permanent member resigns from the committee.

- 219 (ii) When a vacancy exists:
- 220 (A) if the departing member is a member of the Senate, the president of the Senate
- 221 shall appoint a member of the Senate to fill the vacancy; or
- 222 (B) if the departing member is a member of the House of Representatives, the speaker
- 223 of the House of Representatives shall appoint a member of the House of Representatives to fill
- 224 the vacancy.
- 225 (iii) The newly appointed member shall serve the remainder of the departing member's
- 226 unexpired term.
- 227 (d) (i) The president of the Senate shall designate a member of the Senate appointed
- 228 under Subsection (1)(a)(i) as a cochair of the committee.
- 229 (ii) The speaker of the House of Representatives shall designate a member of the
- 230 House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.
- 231 (e) Three representatives and three senators from the permanent members are a quorum
- 232 for the transaction of business at any meeting.
- 233 (f) (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each
- 234 month to review new agency rules, amendments to existing agency rules, and repeals of
- 235 existing agency rules.
- 236 (ii) The committee chairs may suspend the meeting requirement described in
- 237 Subsection (1)(f)(i) at the committee chairs' discretion.
- 238 (2) The office shall submit a copy of each issue of the bulletin to the committee.
- 239 (3) (a) The committee shall exercise continuous oversight of the rulemaking process.
- 240 (b) The committee shall examine each rule submitted by an agency to determine:
- 241 (i) whether the rule is authorized by statute;
- 242 (ii) whether the rule complies with legislative intent;
- 243 (iii) the rule's impact on the economy and the government operations of the state and
- 244 local political subdivisions; ~~and~~
- 245 (iv) the rule's impact on affected persons[-];
- 246 (v) the rule's total cost to entities regulated by the state;
- 247 (vi) the rule's benefit to the citizens of the state; and
- 248 (vii) whether adoption of the rule requires legislative review or approval.
- 249 (c) (i) To carry out these duties, the committee may examine any other issues that the

250 committee considers necessary.

251 (ii) The committee may also notify and refer rules to the chairs of the interim
252 committee that has jurisdiction over a particular agency when the committee determines that an
253 issue involved in an agency's rules may be more appropriately addressed by that committee.

254 (d) In reviewing a rule, the committee shall follow generally accepted principles of
255 statutory construction.

256 (4) When the committee reviews an existing ~~[rules]~~ rule, the committee chairs shall
257 invite the Senate and House chairs of the standing committee and of the appropriation
258 subcommittee that have jurisdiction over the agency whose existing ~~[rules-are]~~ rule is being
259 reviewed to participate as nonvoting, ex officio members with the committee.

260 (5) The committee may request that the Office of the Legislative Fiscal Analyst prepare
261 a fiscal note on any rule.

262 (6) In order to accomplish the committee's functions described in this chapter, the
263 committee has all the powers granted to legislative interim committees under Section 36-12-11.

264 (7) (a) The committee may prepare written findings of the committee's review of a rule
265 and may include any ~~[recommendations]~~ recommendation, including legislative action.

266 (b) When the committee reviews a rule, the committee shall provide to the agency that
267 enacted the rule:

268 (i) the committee's findings, if any; and

269 (ii) a request that the agency notify the committee of any changes the agency makes to
270 the rule.

271 (c) The committee shall provide a copy of the committee's findings, if any, to:

272 (i) any member of the Legislature, upon request;

273 (ii) any person affected by the rule, upon request;

274 (iii) the president of the Senate;

275 (iv) the speaker of the House of Representatives;

276 (v) the Senate and House chairs of the standing committee that has jurisdiction over the
277 agency that made the rule; and

278 (vi) the Senate and House chairs of the appropriation subcommittee that has
279 jurisdiction over the agency that made the rule.

280 (8) (a) The committee may submit a report on ~~[its]~~ the committee's review of state

281 agency rules to each member of the Legislature at each regular session.

282 (b) The report shall include:

283 (i) any [~~findings and recommendations~~] finding or recommendation the committee
284 made under Subsection (7);

285 (ii) any action an agency took in response to a committee [~~recommendations~~]
286 recommendation; and

287 (iii) any [~~recommendations~~] recommendation by the committee for legislation.